

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
North Pittsburgh Systems, Inc. and)	
Consolidated Communications Holdings, Inc.)	WC Docket No. 07-151
Domestic Section 214 Application for)	
Transfer of Control)	

REPLY TO COMMENTS OF SALSGIVER COMMUNICATIONS, INC.

I. INTRODUCTION

Consolidated Communications Holdings, Inc. (“CCH”) and North Pittsburgh Systems, Inc. (“NPSI” and, together with CCH, “Applicants”), by their undersigned attorneys, hereby jointly reply to the Comments filed by Salsgiver Communications, Inc. (“Salsgiver”)¹ in the above-captioned docket.

Salsgiver opposes the grant of the Applicants’ transfer of control Application, arguing that unless this Commission imposes strict pro-competitive, market-opening conditions, the transaction would seriously harm competition in the service area of NPSI’s subsidiary, North Pittsburgh Telephone Company (“NPTC”). As demonstrated below, Salsgiver’s Comments in this proceeding are in fact a procedurally flawed petition to deny, and nothing more than an attempt to delay this transaction based upon an unrelated dispute Salsgiver has had with NPTC regarding gaining access to its poles.

¹ In a complaint in a separate proceeding before the Commission, Salsgiver represents that it is a cable television company. *See*, Salsgiver Complaint, para. 11, as such complaint is referenced in Salsgiver Comments, fn. 7.

II. ARGUMENT

A. Salsgiver's Comments Should be Dismissed as an Abuse of the Commission's Transfer Review Process

The Commission has been careful in the past not to permit parties to subvert the transfer process into a private "forum to address or influence various disputes with one or the other of the applicants that have little if any relationship to the transaction or to the policies and objectives of the Communications Act."² In rejecting attempts to import commercial and other disputes into the FCC's transfer proceedings, this Commission has reminded parties:

It is important to emphasize that the Commission's review focuses on the potential for harms and benefits to the policies and objectives of the Communications Act that flow from the proposed transaction - i.e., harms and benefits that are "merger-specific." The Commission recognizes and discourages the temptation and tendency for parties to use the license transfer review proceeding as a forum to address or influence various disputes with one or the other of the applicants that have little if any relationship to the transaction or to the policies and objectives of the Communications Act.³

In this case, the Commission should not permit Salsgiver to change the public interest review standard in order to serve its own particular interests. In the merger proceeding concerning SBC and Southern New England Telecommunications, Inc., the Commission declined to address Omnipoint's objections in which it alleged SBC was refusing to provide billing and collection services, and making unreasonable demands concerning collocation arrangements. The Commission stated that such issues were not merger-specific matters appropriate for consideration in a merger proceeding.⁴ In declining to address Omnipoint's inter-

² *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, 16 FCC Rcd. 6547, 6550 (2001) ("AOL-Time Warner Order").

³ *AOL-Time Warner Order*, at 6550.

⁴ *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corp., Transferor to SBC Communications, Inc., Transferee*, 13 FCC Rcd. 21292 at 21306 (1998) ("SBC-SNET Order").

carrier disputes, the Commission emphasized that those disputes were pending in a separate proceeding, and the public interest would be served by addressing those disputes separately from the merger proceeding.⁵

The Applicants urge the Commission to follow its sensible precedent in its transaction proceedings and to dismiss Salsgiver's Comments. Carrier disputes, such as the pole attachment dispute described in Salsgiver's Comments, are not merger-related issues and should not be entertained by the Commission in this transfer proceeding.⁶ In fact, Salsgiver admits that its claims have already been brought before the Commission, and it has received relief in one proceeding, and is waiting for action in another proceeding. The Comments raise no justification for delay or denial of a grant of the Application, and Salsgiver has no basis to decide what timeframes are appropriate for Commission review in this case as it is not a party to the merger nor an agent for the Commission in its duty to review the proposed merger.

B. Salsgiver's Comments Fail to Establish a *Prima facie* Case That the Proposed Transfer of Control Will Not Serve the Public Interest

Section 214 of the Act requires the Commission to determine whether the proposed transfer of control of authorizations and licenses is in the public interest. As the Commission has recognized, opponents of proposed transactions have a high burden of proof to justify Commission intervention or rejection of a business transaction. In reviewing a proposed transfer transaction, the Commission must "weigh the potential public interest harms against the potential public interest benefits and to ensure that, on balance, the merger serves the public interest which, at a minimum, requires that it does not interfere with the objectives of the

⁵ *SBC-SNET Order*, at 21306.

⁶ *See AOL-Time Warner Order*, at 6550.

Communications Act.”⁷ The Commission looks to four overriding questions in assessing the public interest aspects of a proposed transaction: (1) whether the transaction would result in a violation of the Communications Act; (2) whether the transaction would result in a violation of Commission Rules; (3) whether the transaction would substantially frustrate or impair the Commission’s implementation or enforcement of the Communications Act, or would interfere with the objectives of that and other statutes; and (4) whether the merger promises to yield affirmative public interest benefits.⁸ In support of the Commission’s review, Sections 1.939, 63.20 and 63.52 of the Commission’s Rules require that petitions to deny:

contain *specific allegations of fact* sufficient to show that the petitioner is a party in interest and that a grant of the application would be *prima facie* inconsistent with the public interest, convenience and necessity. Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof.⁹

It is well-settled that the Commission must undertake a two-step analysis to judge the sufficiency of petitions to deny.¹⁰ First, the Commission must determine whether the petition and supporting affidavits contain specific allegations of fact sufficient to show that a grant of the application would be *prima facie* inconsistent with the public interest, and that the petitioner demonstrates it is a party in interest.¹¹ If a petition establishes a *prima facie* case, the Commission then determines whether, on the basis of the application, the pleadings, and other materials and facts which it may officially notice, a substantial and material question of fact is

⁷ *SBC-SNET Order* at 21298-99.

⁸ *See Applications of Ameritech Corp., Transferor and SBC Communications Inc., Transferee*, 14 FCC Rcd. 14712 at 14737-38 (1999).

⁹ 47 C.F.R. §§ 1.939(d), 63.20(d) & 63.52(c) (emphasis supplied).

¹⁰ *See Astroline Communications v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988).

¹¹ *See* 47 C.F.R. §§ 1.939(d), 63.20(d) & 63.52(c).

presented.¹² If there are no substantial and material questions presented, and the Commission is able to determine that grant of the application would be in the public interest, the application is approved.¹³ The Comments filed by Salsgiver fail to meet these basic legal standards.

First, Salsgiver's pleading, while styled as "comments," is in fact a "petition to deny" that is unsupported by facts that demonstrate Salsgiver's interest in this transfer proceeding, or by any facts demonstrating *prima facie* that grant of the Application would be inconsistent with the public interest, convenience and necessity. Salsgiver's filing contains little more than unsupported allegations and conclusory statements and, as a result, does not establish a *prima facie* case required by the Commission's Rules.¹⁴ The Commission has long recognized that petitions to deny that consist only of "ultimate conclusory facts or more general affidavits are not sufficient."¹⁵ In short, the Comments are devoid of facts upon which the Commission can properly adjudicate Salsgiver's requests for denial (or condition) of the proposed transfer of control of NPSI to Consolidated. The Commission should, therefore summarily dismiss the Comments filed by Salsgiver.

Further, on balance, the public interest benefits associated with the proposed merger

¹² See *Astroline Communications*, at 1561

¹³ 47 U.S.C. § 214.

¹⁴ See *Rocky Mountain Radio Co., LLP, Assignor and AGM-Rocky Mountain Broadcasting I, LLC Assignee for Assignment of Licenses of Seven Colorado Radio Stations and Moss Entertainment Licensee, Inc., Assignor and Salisbury Broadcasting Colorado, LLP, Assignee for Assignment of Licenses of Five Colorado Radio Stations*, 15 FCC Rcd. 7166 (1999); *Applications of KOLA, Inc., Assignor and Ray M. Stanfield, Receiver, Assignee; Ray M. Stanfield, Receiver, Assignor and Inland Empire Broadcasting Corp., Assignee for Assignment of the License of Radio Station KOLA(FM), San Bernardino, California*, 11 FCC Rcd. 14297 (1996) (citing *Beaumont Branch of NAACP v. FCC*, 854 f.2d 501, 507 (D.C. Cir. 1988)); *Application Texas RSA 1 Limited Partnership for Facilities in the Domestic Cellular Telecommunications Service on Frequency Block B in Market No. 652, Texas 1 - Dallam RSA*, 7 FCC Rcd. 6584, 6585 (1992).

¹⁵ *Gencom, Inc. v. FCC*, 832 F.2d 171, n. 11 (D.C. Cir. 1987).

vastly outweigh any vague allegations of harm to Salsgiver that could possibly result from the merger with respect to its ability to offer competitive telecommunications and cable television services in the Pennsylvania marketplace. As noted in the Application, the Applicants expect significant consumer benefits to result from the transaction including increased penetration of broadband products and services. Based on the expanded advanced network capabilities, technical and financial resources, and complementary services, the Applicants expect to deliver a broader array of services, including innovative advanced services, to a broader customer base. The Application also demonstrates that Consolidated is a respected, long-time participant in the local exchange marketplace. Consolidated has made a commitment to focus on rural and suburban communities, which it views as traditionally under-served. The proposed transaction will make possible numerous customer benefits due to resulting cost-efficiencies, greater technical expertise, and customer service resources. The purchase by Consolidated offers NPSI a larger parent organization with greater management resources focused on the local exchange business. As a result of the Merger, NPTC and Penn Telecom, Inc., as part of the Consolidated corporate family, will have features of the largest carriers, while maintaining the strong commitment to excellent service that their customers have come to expect.

Finally, Consolidated has a track record that demonstrates commitment to helping communities thrive, through volunteerism, financial support, and investment. For example, Consolidated provides substantial financial and human resource and leadership support to the United Way Campaigns in Illinois and Texas, YMCAs, Special Olympics, student scholarships, children's arts programs, Chambers of Commerce, historic foundations, animal shelters, tourism organizations, community leadership programs and a variety of other civic organizations and causes. Consolidated anticipates making and maintaining similar public service commitments in

Western Pennsylvania following the consummation of the Merger.

Salsgiver's claims that the Applicants have failed to meet their public interest burden are clearly unfounded. The Application itself lists numerous public benefits expected to flow from the merger, as noted above, including the potential for greater penetration of broadband services and acceptance by consumers. Clearly, the benefits associated with the proposed transaction far outweigh any speculative harms of which Salsgiver complains. Salsgiver's public interest "harms" are simply regurgitations of an existing dispute it has with NPTC and are in no way tied to the result of the Commission's approval of the Application. As such, they should be dismissed as irrelevant to the instant proceeding.

C. Salsgiver's Comments are Meritless and Should Be Summarily Dismissed

As noted above, Section 214 of the Communications Act requires that the Commission determine whether approval of the proposed transfers of control will serve the public interest, convenience, and necessity. That analysis includes matters such as transferee qualifications, productivity enhancements, improved incentives for innovation, and the advancement of FCC policy goals.¹⁶ Even if Salsgiver's conclusory allegations were supported by evidence, which is not the case, these allegations on their face are insufficient to justify denial of the Application.

Salsgiver's sole basis for urging denial is the existence of some pole attachment complaints that were filed against NPTC, a subsidiary of the transferring company. In one of those cases, NPTC had initially refused to grant Salsgiver's parent company, Salsgiver, Inc., access to its poles because it was apparently operating as an Internet access provider and was thus not subject to the requirement that the telephone company allow attachments on its

¹⁶ See generally *Applications of NYNEX Corporation and Bell Atlantic Corporation*, 12 FCC Rcd. 19985, 20008-14 (1997) ("*Bell Atlantic-NYNEX Order*").

poles.^{17 18} A second complaint, this time brought by a Salsgiver affiliate named Salsgiver Telecom, Inc., was granted on the basis that Salsgiver Telecom, Inc. had received a certificate of convenience and necessity from the Pennsylvania Public Utility Commission as a competitive access provider.¹⁹ Thus, the affiliate's claim was satisfied. NPTC has complied with this Order and has offered Salsgiver Telecom, Inc. access to its poles. In the Salsgiver Order itself, the Commission concluded "Salsgiver Telecom has failed to show that extraordinary relief in the form of penalties or sanctions is warranted. In particular, Salsgiver Telecom has not shown that the argument NPTC has made in this and the other cases Salsgiver Telecom cites are so devoid of merit as to be frivolous."²⁰ Thus, this case provides no basis for justifying the extraordinary action of denying or conditioning a merger.

What's more, this allegation is unrelated to the transaction at hand. As noted above, the Commission has routinely refused to consider allegations of misconduct in a merger transaction that are unrelated to the merger itself.²¹

The second pole attachment case was filed by Salsgiver, alleging that it was a cable TV

¹⁷ See, e.g., 47 U.S.C. §§ 251(b), 224.

¹⁸ NPTC subsequently entered into a pole attachment agreement with Salsgiver itself. See, Salsgiver Complaint, para. 23 -24, as such complaint is referenced in Salsgiver Comments, fn. 7.

¹⁹ See *Salsgiver Telecom, Inc. v. North Pittsburgh Telephone Company*, DA 07-2150 (Enf. Bur. Rel. May 24, 2007) ("Salsgiver Order"). Salsgiver's citation to two other granted complaints likewise do not evidence any bad faith on the part of North Pittsburgh. Rather, the company was only apparently seeking to enforce the law of pole attachments in these situations. These complaints have all since been resolved and the complainants are being accommodated on North Pittsburgh's poles.

²⁰ *Id.* at ¶ 24.

²¹ See, e.g., *Verizon Communications, Inc., Transferor and América Móvil, S.A. De C.V., Transferee Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI)*, 22 FCC Rcd 6195, at ¶ 25 (2007) ("TELPRI Order"); *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, 20 FCC Rcd 18433, 18529, ¶ 91 (2005) ("Verizon/MCI Order").

service provider, when in fact it has not shown any likelihood of acting as a cable TV provider. Although NPTC has denied in the complaint case that Salsgiver is eligible for pole attachments as a cable TV provider because it has never constructed the plant, these allegations are pending resolution by the Commission.²² NPTC fully intends to abide by any FCC order in this case. Thus, any relief to which Salsgiver may be entitled can be addressed in the pending complaint case. The Commission has also routinely refused to deny or condition mergers when there were other pending proceedings that could address the parties' complaint.²³

Applying this precedent to this instant transaction, the Commission should summarily reject Salsgiver's request that the merger be denied or conditioned. In fact, it is curious that Salsgiver would oppose the instant transaction because, if it truly believed that NPTC was a bad actor, it should welcome the fact that a new company, Consolidated, would be in control of NPTC. Consolidated has an unblemished record of complying with pole attachment obligations; indeed, Salsgiver has cited no instances where a pole attachment complaint was even filed against Consolidated.

III. CONCLUSION

Salsgiver improperly seeks to use the FCC transfer proceeding to gain leverage over the Applicants in connection with a dispute between Salsgiver and NPTC currently before the FCC in another proceeding. Salsgiver thus seeks to taint this proceeding with something wholly unrelated to the public interest in this merger proceeding. The Comments provide nothing more than empty allegations of anti-competitive behavior and speculative competitive harm, none of which is relevant to the transaction. Salsgiver's proposed merger conditions are completely

²² See, *Salsgiver Communications, Inc. v. North Pittsburgh Tel. Co.*, Pole Attachment Complaint, File No. EB-06-MD-004 (filed Mar. 20, 2006).

²³ *TELPRI Order* at ¶ 29; *Verizon/MCI Order*, 20 FCC Rcd at 18529, ¶191, n.517.


redundant to conditions already existing or being addressed in another Commission proceeding. Therefore, the Commission should follow its long-standing precedent and reject Salsgiver's Comments because they address grievances unrelated to the merger proceedings and raises no relevant public interest issues. As such, the Applicants request that the Commission dismiss Salsgiver's procedurally flawed and unsupported quasi-petition to deny and grant the Applicants' request for transfer of control authority.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Reply To Comments Of Salsgiver Communications, Inc. was sent via first class mail, postage prepaid on August 16, 2007, to:

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